

**§ 30.801 What special definitions does OWCP use in connection with Part E wage-loss determinations?**

For the purposes of paying compensation based on wage-loss under Part E of the Act, OWCP will apply the following definitions:

(a) *Average annual wage* means four times the average quarterly wages of a covered Part E employee for the 12 quarters preceding the quarter during which he or she first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility, excluding any quarters during which the employee was unemployed. Because being “retired” is not equivalent to being “unemployed,” quarters during which an employee had no wages because he or she was retired will not be excluded from this calculation.

(b) *Normal retirement age* means the age at which a covered Part E employee first became eligible for unreduced retirement benefits under the Old-Age, Survivors and Disability Insurance (OASDI) provisions of the Social Security Act. In general, persons born during or before 1937 are eligible for unreduced OASDI retirement benefits at age 65, and that age increases in monthly increments until it reaches 67, which is the age at which persons born during or after 1960 become eligible for unreduced OASDI retirement benefits.

(c) *Quarter* means the three-month period January through March, April through June, July through September, or October through December.

(d) *Quarter during which the employee was unemployed* means any quarter during which the covered Part E employee had \$700 (in constant 2005 dollars) or less in wages unless the quarter is one during which the employee was retired.

(e) *Year of wage-loss* means a calendar year during which the covered Part E employee's earnings were less than his or her average annual wage, after such earnings have been adjusted using the Consumer Price Index for All Urban Consumers (CPI-U), as produced by the Bureau of Labor Statistics, to reflect their value in the year during which the employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility.

EVIDENCE OF WAGE-LOSS

**§ 30.805 What evidence does OWCP use to determine a covered Part E employee's average annual wage and whether he or she experienced compensable wage-loss under Part E of EEOICPA?**

(a) OWCP may rely on quarterly wages information reported to the Social Security Administration to establish a covered Part E employee's presumed average annual wage (see § 30.810) and the duration and extent of any years of wage-loss that are compensable under Part E of the Act (see § 30.811). OWCP may also rely on other probative evidence of a covered Part E employee's wages, and may ask the claimant for additional evidence necessary to make this determination, if necessary.

(b) OWCP also requires the submission of rationalized medical evidence of sufficient probative value to establish that the period of wage-loss at issue is causally related to the covered Part E employee's covered illness.

**§ 30.806 May a claimant submit factual evidence in support of a different determination of average annual wage and/or wage-loss than that found by OWCP?**

A claimant who disagrees with the evidence OWCP has obtained under § 30.805(a) and alleges a different average annual wage for the covered Part E employee, or that there was a greater duration or extent of wage-loss, may submit records that were produced in the ordinary course of business due to the employee's employment to rebut that evidence, to the extent that such records are determined to be authentic by OWCP by a preponderance of the evidence. The average annual wage and/or wage-loss of the covered Part E employee will then be determined by OWCP in the exercise of its discretion.

DETERMINATIONS OF AVERAGE ANNUAL WAGE AND PERCENTAGES OF LOSS

**§ 30.810 How will OWCP calculate the average annual wage of a covered Part E employee?**

To calculate the average annual wage of a covered Part E employee as defined in § 30.801(a), OWCP will:

## § 30.811

## 20 CFR Ch. I (4–1–06 Edition)

(a) Aggregate the wages for the twelve quarters that preceded the quarter during which the covered Part E employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or a RECA section 5 facility, excluding any quarter during which the employee was unemployed;

(b) Add any additional wages earned by the employee during those same quarters as evidenced by records described in §§ 30.805(a) and 30.806;

(c) Divide the sum of paragraphs (a) and (b) of this section by 12 less the number of quarters during which the employee was unemployed; and

(d) Multiply this figure by four to calculate the covered Part E employee's average annual wage.

### **§ 30.811 How will OWCP calculate the duration and extent of a covered Part E employee's initial period of compensable wage-loss?**

(a) To determine the initial calendar years of wage-loss, OWCP will use the evidence it receives under §§ 30.805 and 30.806 to determine the quarter in which a covered Part E employee first sustained wage-loss due to exposure to a toxic substance while engaged in employment at a DOE facility or a RECA section 5 facility, as appropriate.

(b) OWCP will then compare the calendar-year wages for that employee, as adjusted, with the average annual wage determined under § 30.810 for each calendar year beginning with the calendar year that includes the quarter in which the wage-loss commenced, and concluding with the last calendar year of wage-loss prior to the submission of the claim or the calendar year in which the employee reached normal retirement age (as defined in § 30.801(b), whichever occurred first.

(c) OWCP will then aggregate separately the number of calendar years of wage-loss in which the employee's wages, as adjusted, did not exceed 50 percent of the average annual wage determined under § 30.810, and the number of calendar years of wage-loss in which the employee's wages, as adjusted, exceeded 50 percent of such average annual wage, but did not exceed 75 percent of such average annual wage.

(d) For each calendar year of wage-loss determined under paragraph (c) of

this section during which the employee's wages did not exceed 50 percent of his or her average annual wage, OWCP will pay the employee \$15,000 as compensation for wage-loss. For each calendar year of wage-loss determined under paragraph (c) of this section during which the employee's calendar-year wages exceeded 50 percent of his or her average annual wage but did not exceed 75 percent of such average annual wage, OWCP will pay the employee \$10,000 as compensation for wage-loss.

### **§ 30.812 May a covered Part E employee claim for subsequent periods of compensable wage-loss?**

A covered Part E employee previously awarded compensation for wage-loss under § 30.811 may file for additional compensation for wage-loss suffered by the employee during periods subsequent to a period for which a wage-loss claim for the employee has already been adjudicated by OWCP. However, no compensation for wage-loss shall be awarded for any period following the year during which the covered Part E employee attained normal retirement age for purposes of the Social Security Act as described in § 30.801(b).

### **SPECIAL RULES FOR CERTAIN SURVIVOR CLAIMS UNDER PART E OF EEOICPA**

### **§ 30.815 Are there special rules that OWCP will use to determine the extent of a deceased covered Part E employee's compensable wage-loss?**

(a) For purposes of adjudicating a claim of a survivor of a deceased covered Part E employee only, OWCP will presume that such employee experienced wage-loss for each calendar year subsequent to the calendar year of his or her death through and including the calendar year in which the employee would have reached normal retirement age under the Social Security Act. During these particular calendar years, OWCP will also presume that the deceased covered Part E employee's subsequent calendar-year wages did not exceed 50 percent of his or her average annual wage as determined under § 30.810.

(b) Except as provided in paragraph (a) of this section, OWCP will calculate the wage-loss of a deceased covered